



Fast Track Proposed Regulation Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) citation	Primary action: Article 44 (9VAC5-40-6000 et seq.) of 9VAC5-40 Secondary action(s): 9VAC5-10-20 and 9VAC5-20-202
Regulation title	Regulations for the Control and Abatement of Air Pollution
Action title	Repeal of Hospital/Medical/Infectious Waste Incinerators (Rev. J11)
Date this document prepared	December 9, 2011

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

Since the initial adoption of Article 44, Hospital/Medical/Infectious Waste Incinerators (HMIWI) (9VAC5-40-6000 et seq.), all three designated incinerator facilities have been dismantled. In 2009, EPA promulgated revised HMIWI emission guidelines that triggered the need for revised regulations and new state plan submittals. With no facilities in operation in the Commonwealth, a negative declaration was submitted to EPA and approved in 2010. Because there are no sources in the state to control, and because there are no longer HMIWI components in the federal rule for Virginia, there is no longer a need for the corresponding Virginia regulation. The definition of the term "metropolitan statistical area" in 9VAC5-10-20 and the listing of such areas in 9VAC5-20-202 should also be repealed as the term is only used in Article 44 and no other regulation of the board.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On December 2, 2011, the State Air Pollution Control Board:

1. Authorized the department to promulgate the repeal of Article 44 for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The Board's authorization constituted its repeal of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.
2. Authorized the Department to set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the proposal.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare. Written assurance from the Office of the Attorney General that the State Air Pollution Control Board possesses the statutory authority to promulgate the proposed regulation amendments is available upon request.

Promulgating Entity

The promulgating entity for this regulation is the State Air Pollution Control Board.

Federal Requirements

The original purpose of the regulation was to establish emission standards that required the owners of HMIWIs to limit emissions of organics, metals, and acid gases to a specified level necessary to protect public health and welfare. The regulation was promulgated in order for the Commonwealth to meet the requirements of §§ 111(d) and 129 of the federal Clean Air Act.

HMIWI emissions are a "designated" pollutant under § 111(d) of the Act. Designated pollutants are pollutants which are not § 108(a) "criteria" pollutants, or § 112(b)(1)(A) "hazardous" pollutants, but for which standards of performance for new sources have been established under § 111(b), new source performance standards (NSPSs). When the EPA establishes an NSPS, states are required to develop standards for existing facilities based on EPA emission guidelines. In conjunction of § 111(d), § 129 and its associated standards were promulgated because EPA determined that incinerator emissions cause or contribute significantly to air pollution which may reasonably be expected to endanger public health and welfare. The intended effect of the standards and guidelines is to form a basis for state action to develop state regulations controlling HMIWI emissions to the level achievable by the best demonstrated system of continuous emission reduction, considering costs, non-air quality health and environmental impacts, and energy requirements. In order for §§ 111 and 129 to be effected, the specific guidelines are promulgated in the Code of Federal Regulations (CFR) (subpart Ce of 40 CFR 63). State regulations must be at least as stringent as the guidelines.

The final rule (Subpart Ec of 40 CFR Part 60) was published by EPA in the Federal Register of September 15, 1997 (62 FR 48348), and applies to existing HMIWIs built on or before June 20, 1996.

State Requirements

There are no state requirements that mandated the promulgation of this regulation, and no state requirements that prevent its repeal.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The Commonwealth of Virginia Hospital/Medical/ Infectious Waste Incinerators (HMIWI) plan and related state rule were approved by EPA in the September 10, 2004 edition of the Federal Register (69 FR 54756) and codified in 40 CFR Part 62, subpart VV. Since that time, all three designated incinerator facilities in the plan inventory subject to the state rule have been dismantled. On October 6, 2009, EPA promulgated revised HMIWI emission guidelines under 40 CFR Part 60, subpart Ce, that triggered the need for revised state plan submittals. As a result, on September 13, 2010, DEQ submitted a negative declaration regarding HMIWI sources within the state and requested EPA's approval of a SIP withdrawal request. In the December 17, 2010 edition of the Federal Register (75 FR 78917) EPA published "Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Commonwealth of Virginia; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerator (HMIWI) Units, Negative Declaration and Withdrawal of EPA Plan Approval." Subpart VV § 62.11625 was modified to reflect a negative declaration and became effective February 15, 2011. Because there are no sources in the state to control, and because there are no longer HMIWI components in the federal rule for Virginia, there is no longer a need for the corresponding Virginia regulation. The definition of the term "metropolitan statistical area" in 9VAC5-10-20 and the listing of such areas in 9VAC5-20-202 should also be repealed as the term is only used in Article 44 and in no other regulation of the board.

The department is requesting approval of draft final regulation amendments to repeal Article 44, the definition of the term "metropolitan statistical area" in 9VAC5-10-20, and the listing of metropolitan statistical areas in 9VAC5-20-202. Approval of the amendments will ensure that the board's regulations are accurate and up to date.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (1) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Virginia requested a finding of negative declaration for HMIWI on September 13, 2010 as all designated incinerator facilities in the plan inventory subject to Article 44 had been dismantled. On December 17,

2010, EPA approved the negative declaration and modified the code of Federal Regulations accordingly. Subpart VV § 62.11625 was modified to reflect a negative declaration and became effective on February 15, 2011. Because there are no sources subject to the regulation and no HMIWI components in the federal rule for Virginia, there is no longer a need for the corresponding Virginia regulation, or for the use of the term “metropolitan statistical area” in 9VAC5-10-20 and 9VAC5-20-202. There is no stakeholder group that is likely to object to repeal of the regulation. The use of the fast track process is, therefore, appropriate.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the “Detail of changes” section.)

Article 44 is repealed in its entirety: the applicability, definitions, standards for particulate matter, carbon monoxide, dioxins/furans, hydrogen chloride, sulfur dioxide, nitrogen oxides, lead, cadmium, mercury, visible emissions, fugitive dust/emissions, odor, toxic pollutants, operator training and qualification, waste management plans, inspections, compliance, emissions testing and monitoring, recordkeeping and reporting, compliance schedules, registration, facility and control equipment maintenance or malfunction, and permits. Chapters 10 and 20 are revised to remove provisions concerning metropolitan statistical areas, which are used only in Article 44.

Issues

Please identify the issues associated with the proposed regulatory action, including: (1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; (2) the primary advantages and disadvantages to the agency or the Commonwealth; and (3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

1. Public: The primary advantage to the public is the removal of unusable regulatory requirements. There are no disadvantages to the public.
2. Department: The primary advantage to the department is the removal of regulations that are no longer necessary. There are no disadvantages to the department.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The proposed regulation amendments to repeal Article 44, Hospital/Medical/Infectious Waste Incinerators (9VAC5-40-600 et.seq.) and related regulatory provisions are not more restrictive than the applicable legal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There is no locality which will bear any identified disproportionate material air quality impact due to the proposal which would not be experienced by other localities.

Public participation

Please include a statement that in addition to any other comments on the regulation, the agency is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community, and the impacts of the regulation on farm or forest land preservation.

In addition to any other comments, the Department is seeking comments on the costs and benefits of the proposal, the impacts on the regulated community, and impacts of the regulation on farm or forest land preservation. Also, the Department is seeking information on impacts to small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include (1) projected reporting, recordkeeping and other administrative costs, (2) probable effect of the proposal on affected small businesses, and (3) description of less intrusive or costly alternative methods of achieving the purpose of the proposal.

Anyone wishing to submit written comments may do so by mail, email, or fax to the staff contact listed below. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period. Commenters submitting faxes are encouraged to provide the signed original by postal mail within one week.

All comments requested by this document must be submitted to the agency contact: Mary E. Major, Environmental Program Manager, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia, 23218 (email mary.major@deg.virginia.gov, fax 804-698-4510).

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: (1) the establishment of less stringent compliance or reporting requirements; (2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; (3) the consolidation or simplification of compliance or reporting requirements; (4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and (5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

An analysis of the proposal was completed for alternative regulatory methods that will minimize the adverse impact on small businesses without compromising health, safety, environmental and economic welfare.

The repeal of Article 44 does not differ materially from the pertinent EPA regulations, but will in fact, correctly reflect the current federal requirements codified in 40 CFR Part 62, subpart VV . A failure to repeal any portion of Article 44 or the definition of the term “metropolitan statistical area” in 9VAC5-10-20 or listing of metropolitan statistical areas in 9VAC5-20-202 could lead to confusion on the part of regulated businesses, individuals, and communities and would compromise the effectiveness of the board’s regulations in protecting the health and welfare of the public.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures.	It is not expected that the repeal of this regulation will result in any cost to the Department.
Projected cost of the new regulations or changes to existing regulations on localities.	There are no projected costs to localities resulting from the repeal of this regulation.
Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.	Because the facilities that were subject to this regulation have been dismantled, there are no stakeholders that will be affected by the repeal of this regulation.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	Because the facilities that were subject to this regulation have been dismantled, there are no individuals, businesses or other entities that will be affected by the repeal of this regulation.
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	Because the regulation is not in use, there are no projected costs of any kind to any individual, business or other entity resulting from the repeal of this regulation.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

Alternatives to the proposed regulation amendments were considered by the Department. The Department determined that the first alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulation. The alternatives considered by the Department, along with the reasoning by which the Department has rejected any of the alternatives being considered, are discussed below.

1. Repeal Article 44 and related provisions, and thereby satisfy the provisions of the law and associated regulations and policies. This option was chosen because it makes the state regulations administratively correct.
2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option was not chosen because an amended regulation would still be either unusable or unnecessary as there are no affected sources within the Commonwealth.
3. Take no action to amend the regulations and continue to keep Article 44 effective. This option was not chosen because Article 44 is no longer used or needed.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: (1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; (2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; (3) strengthen or erode the marital commitment; and (4) increase or decrease disposable family income.

It is not anticipated that these regulation amendments will have a direct impact on families.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes made to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9VAC5-10-20		Definition of the term “metropolitan statistical area”	Repeal. Definition only used in Article 44.
20-202		Listing of metropolitan statistical	Repeal. Listing only referenced in

		areas	Article 44.
40-6000		Provisions for applicability and designation of affected facility	Repeal. No affected sources exist in the Commonwealth.
40-6010		Provisions for definitions	Repeal. No affected sources exist in the Commonwealth.
40-6020		Provisions for standard for particulate matter	Repeal. No affected sources exist in the Commonwealth.
40-6030		Provisions for standard for carbon monoxide	Repeal. No affected sources exist in the Commonwealth.
40-6040		Provisions for standard for dioxins/furans	Repeal. No affected sources exist in the Commonwealth.
40-6050		Provisions for standard for hydrogen chloride	Repeal. No affected sources exist in the Commonwealth.
40-6060		Provisions for standard for sulfur dioxide	Repeal. No affected sources exist in the Commonwealth.
40-6070		Provisions for standard for nitrogen oxides	Repeal. No affected sources exist in the Commonwealth.
40-6080		Provisions for standard for lead	Repeal. No affected sources exist in the Commonwealth.
40-6090		Provisions for standard for cadmium	Repeal. No affected sources exist in the Commonwealth.
40-6100		Provisions for standard for mercury	Repeal. No affected sources exist in the Commonwealth.
40-6110		Provisions for standard for visible emissions	Repeal. No affected sources exist in the Commonwealth.
40-6120		Provisions for standard for fugitive dust/emissions	Repeal. No affected sources exist in the Commonwealth.
40-6130		Provisions for standard for odor	Repeal. No affected sources exist in the Commonwealth.
40-6140		Provisions for standard for toxic pollutants	Repeal. No affected sources exist in the Commonwealth.
40-6150		Provisions for HMIWI operator training and qualification	Repeal. No affected sources exist in the Commonwealth.
40-6160		Provisions for waste management plans	Repeal. No affected sources exist in the Commonwealth.
40-6170		Provisions for inspections	Repeal. No affected sources exist in the Commonwealth.
40-6180		Provisions for compliance, emissions testing, and monitoring	Repeal. No affected sources exist in the Commonwealth.
40-6190		Provisions for recordkeeping and reporting.	Repeal. No affected sources exist in the Commonwealth.
40-6200		Provisions for compliance schedules	Repeal. No affected sources exist in the Commonwealth.
40-6210		Provisions for registration	Repeal. No affected sources exist in the Commonwealth.
40-6220		Provisions for facility and control equipment maintenance or malfunction	Repeal. No affected sources exist in the Commonwealth.
40-6230		Provisions for permits	Repeal. No affected sources exist in the Commonwealth.